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Human Rights Council
Twenty-ninth sessions
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by The Arab Association for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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1509525

Please recycle

Written statement submitted by the Arab Association for Human Rights, a nongovernmental organization in special consultative status

1. **The Arab Association for Human Rights (HRA),** remains gravely concerned over policies and practices of Israel that adversely impact not only the Palestinians subject to the daily miseries and humiliations of the occupation, but also the Palestinian Arab minority in the State of Israel. The following is a brief overview of recent developments in Israel that suggest a widespread and systematic pattern of discrimination and dispossession of the Palestinian people. Such policies violate both the letter and the spirit of various provisions of international human rights law.

'Jewish Nation-State' bill

2. Last November, the Israeli cabinet voted 14-7 to pass a new Basic Law defining Israel as the nation-state of the Jewish people. Although many of the bill's provisions apply already in Israel, the proposed law would codify, both practically and symbolically, a discriminatory régime that treats Palestinian Arabs as second-class citizens of the State of Israel. The bill stipulates that '[t]he Right of national self-determination in the State of Israel is unique to the Jewish people'. It provides that Hebrew shall be exclusively the official state language, demoting Arabic to a 'special standing'. While presumably preserving the rights of *individuals* regardless of religion or nationality, the proposed law makes collective rights the exclusive domain of the Jewish people. Nowhere does the term 'equality' appear in the proposed legislation.[1]

3. The International Covenant on Civil and Political Rights (ICCPR), to which Israel is a State Party, states that '[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law'.[2] Israel is also a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which safeguards the cultural rights of peoples 'without discrimination of any kind as to race . . . language, religion . . . national or social origin . . . birth or other status'.[3] Although the bill presumably does not interfere with Palestinian Arabs' individual rights as such, it would privilege the national and collective rights of the Jewish people to the exclusion of non-Jews. By predicating the status and protections afforded to persons on the basis of national and religious origin, the bill would codify an intrinsically discriminatory régime contrary to the human rights norms Israel has ratified.

4. This status-based discrimination extends as well to the Palestinian refugees displaced since 1948, whose right of return to their country (present-day Israel) has been recognised in numerous international human rights instruments[4] and by the U.N. General Assembly.[5] The Jewish nation-state bill grants a right of citizenship to every Jew, no matter his or her origin, while denying that same right to Palestinian refugees and their descendants, no matter their ties to their

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[1] *See Basic Law: Israel as Nation-State of the Jewish People*, ISRAEL MINISTRY OF JUSTICE, http://index.justice.gov.il/StateIdentity/InformationInEnglish/Documents/Basic%20Law%20110911%20(1).pdf.

[2] International Covenant on Civil and Political Rights art. 26, 16 Dec. 1966 [hereinafter ICCPR].

[3] International Covenant on Economic, Social and Cultural Rights art. 2(2), 16 Dec. 1966 [hereinafter ICESCR].

[4] *See, e.g.*, ICCPR, *supra* note 2, art. 12(4); International Convention on the Elimination of All Forms of Racial Discrimination art. 5(d)(ii), 21 Dec. 1965 [hereinafter CERD]; Universal Declaration of Human Rights art. 13(2), 10 Dec. 1948 [hereinafter UDHR].

[5] *See, e.g.*, G.A. Res. 2535B, U.N. Doc. A/RES/2535B (XXIV) A–C (10 Dec. 1969); G.A. Res. 2672 (XXV), U.N. Doc. A/RES/2672 (XXV) A–D (8 Dec. 1970).

homeland. This asymmetrical residency and citizenship standard is exercised in flagrant violation of human rights principles and strictly on the basis of national and religious origin.

Racist statements during the last election

5. The Universal Declaration of Human Rights (UDHR) proclaims that '[t]he will of the people shall be the basis of the authority of government', as instantiated through elections 'by universal and equal suffrage'.[6] The ICCPR affirms that every citizen shall be entitled—without discrimination on the basis of race, political opinion or national origin[7]—'to take part in the conduct of public affairs, directly or through freely chosen representatives'.[8]

6. On 17 March, the day of the last Knesset election, Prime Minister Benjamin Netanyahu stated publicly that 'right-wing rule is in danger. Arab voters are coming out in droves to the polls. Left-wing organisations are bussing them out'.[9] This racist and dehumanising rhetoric did not necessarily prevent Palestinian Arabs from exercising their right to vote; but it revealed the discriminatory attitudes, expressed by government officials, that may portend future political restrictions. Moreover, it exposed the entrenched and institutionalised exclusion of Palestinian Arabs from Israeli political participation—alienating an already marginalised minority group—contrary to the principles of equality and participation enshrined in the ICCPR.

Forced evictions

10. All of these developments foreground the continued occupation of the Palestinian territory and the ongoing disenfranchisement of the Arab citizens of Israel. One of the degradations these two populations share in common is their subjection to forced evictions, authorized by the State of Israel, to make room for Jewish residency. The 2011 Bill on the Arrangement of Bedouin Settlement in the Negev, known as the Prawer Plan, would evict 30,000 Bedouin living in the Negev,[10] whilst encouraging Jewish settlement into the region.[11] More recently, the Israeli Supreme Court ruled that the Bedouin villagers of Umm al-Hiran held no legal rights to their land, which belonged instead to the State; it was thus permissible for the government to remove the Bedouin inhabitants to construct a town for Jewish residents.[12]

11. Such policies give rise to a widespread practice of forcibly evicting the Palestinian Arab minority of Israel: by preventing development, withholding services, evacuating residents and demolishing homes. This practice violates, *inter alia*, the internationally recognized human right to adequate housing,[13] especially in light of the guarantee of non-discrimination.[14] Rather than secure those rights, the policies of Israel have given the deprivation thereof a legal imprimatur.

In light of the above, we urge the HRC to:

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[6] UDHR, *supra* note 4, art. 21(3).
[7] ICCPR, *supra* note 2, art. 2(1).
[8] *Id.* at art. 25(a).
[9] *Benjamin Netanyahu*, FACEBOOK (17 Mar. 2015), www.facebook.com/video.php?v=10152778935532076.
[10] *See* Dana Weiler-Polak, *UN Panel Urges Israel to Shelve 'Racist' Bedouin Relocation Plan*, HAARETZ (26 Mar. 2012), http://www.haaretz.com/news/israel/un-panel-urges-israel-to-shelve-racist-bedouin-relocation-plan-1.420692.
[11] *See* Catrina Stewart, *Israel's Bulldozers vs the Bedouin Arabs*, BELFAST TELEGRAPH (4 Nov. 2011), http://www.belfasttelegraph.co.uk/news/world-news/israels-bulldozers-vs-the-bedouin-arabs-28676938.html.
[12] *See* S.C. Appeal 3094/11, Ibrahim Farhood Abu al-Qi'an et al. v. The State of Israel (5 May 2015).
[13] *See, e.g.*, ICESCR, *supra* note 3, art. 11(1).
[14] *See, e.g.*, CERD, *supra* note 4, art. 5(e).

1. **Call on the State of Israel to review its policies and jurisprudence in line with its obligations under international human rights law;**
2. **Call upon the GA to condemn those practices of Israel which contravene established norms of international law;**
3. **Continue to review, in tandem with relevant international instruments' monitoring bodies, the State of Israel's compliance with its international obligations;**
4. **Use all means at the HRC's disposal to seek redress for victims of violations of international human rights law, particularly *vis-à-vis* those forcibly displaced.**

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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 May 2015]

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Please recycle

Qatar: End flawed practices in the administration of justice

Amnesty International shares concerns relating to the administration of justice highlighted in the March 2015 report of the Special Rapporteur on the Independence of Judges and Lawyers, Ms. Gabriela Knaul, on her mission to Qatar.[1]

Amnesty International has recorded instances of human rights violations in the administration of justice in Qatar and draws attention, below, to several emblematic cases.

VAGUE FORMULATION OF CRIMINAL OFFENCES USED TO CRIMINALISE FREE EXPRESSION

The government arrested Qatari poet Mohammad al-'Ajami in November 2011 in connection with a poem he wrote. The government asserted that the poem sought 'to overthrow the ruling system' and 'insulted' the Amir. The authorities prosecuted al-'Ajami on the basis of Articles 134 and 136 of the Penal Code. The former provides for a maximum of five years' imprisonment for "*challeng[ing] by any public means the exercise by the Emir of his rights or authorities or criticiz[ing] him.*" The latter provides for life imprisonment for "overthrow" of the government.

Amnesty International believes that the legal basis of the case against al-'Ajami rests on vaguely worded provisions and is incompatible with respect for the right to freedom of expression. It is contrary to the principle of legal certainty and the applicable penal provisions are open, as in this case, to misuse by authorities to penalise legitimate peaceful exercise of human rights.

PROLONGED PRE-TRIAL DETENTION, TORTURE AND ILL-TREATMENT

Following his arrest on 16 November 2011, al-'Ajami was held in solitary confinement. He had access only to his lawyer for three months before he was allowed visits from his family. Throughout the pre-trial investigations the government held him in solitary confinement in a very small cell.

While in solitary confinement, interrogators forced him to sign a document that was relied on to obtain his conviction, stating that he recited the poem in a public place. He asserted that this was not true.

Al-'Ajami continued to be held in solitary confinement until May 2012, six months after his arrest. In response to complaints from his lawyer, the state prosecutor stated that he would be kept in isolation until the judgement was delivered.

The *period of* al-'Ajami's pre-trial detention without charge exceeded that allowed by Qatar's own laws. Qatar's 2002 Law on the Protection of Society and the 2004 Code of Criminal Procedures set out a hierarchy of detention periods, neither of which exceeds six months, save in exceptional circumstances. While the case was based on the recitation of a poem, it was dealt with as a matter of national security. Even on this basis, the detention of al-'Ajami exceeded the provisions set out in the 2004 Law on Combatting Terrorism.

Formal trial proceedings commenced in March 2012, but the authorities did not set out the charges against al-'Ajami until 21 June 2012.

On 7 April 2010, the government arrested Ronaldo Lopez Ulep, a Filipino migrant worker and former civilian employee of the Qatari air force. They held him for one month in incommunicado detention before letting his family know of his whereabouts.

[1] A/HRC/29/26/Add.1

The government has not replied to Amnesty International letters of September 2014 and January 2015 seeking information on the case. It did not rebut allegations that officials tortured and ill-treated him during the first eight months of his detention. Allegations of torture include that officials burned cigarettes into the skin on his back and legs during two interrogation session and that they stripped him naked and forced him to crawl on his knees until they bled, during which time officials punched and kicked him.

The government did not refute Amnesty International's findings that Qatari officials forced Lopez Ulep to sign a document in Arabic – which he could not read – that was used in court as a 'confession'. Government officials deprived him of sleep and held him for prolonged periods with his arms tied behind his back. He was held in solitary confinement at the State Security Bureau in Doha for four years. Two other Filipino nationals are involved in this case and are reported to have faced similar ill-treatment and unfair proceedings; one of these men has been sentenced to death.

On 31 August 2014, after several days of surveillance, the Qatari security services arrested, Krishna Pasad Upadhyaya, aged 52, and Ghimire Gundeve, 36 United Kingdom nationals and human rights defenders who were conducting research into the working conditions of mainly Nepalese workers in Qatar.

The authorities did not inform them why they were arrested. They denied the men access to legal and consular representation until 6 September. The two men left Qatar on 9 September 2014. The authorities never charged them. Phones and equipment confiscated from the men were never returned.

Amnesty International fears that the conduct of the authorities in the case of Krishna Pasad Upadhyaya and Ghimire Gundeve as well as Ronaldo Lopez Ulep suggest a discriminatory approach towards the men, who are not Qatari that echoes paragraphs 43-45 of the report of the Special Rapporteur.

DUE PROCESS AND UNFAIR TRIAL

Reflecting concerns expressed in section A1 of the Special Rapporteur's report (paras 35-38), in the case of Mohammad al-'Ajami the court did not adhere to the principle of separation of powers between the investigative and adjudicative functions: the investigating magistrate served as presiding judge. At the outset of the trial, al-'Ajami's lawyer requested that the presiding judge exclude himself from the case in line with Articles 214 and 232 of the Qatari Code of Criminal Procedure (Law No. 23 of 2004), but the judge rejected the request.

In June 2012, the presiding judge ruled that the subsequent sessions would be held *in camera*. Article 187 of the Code of Criminal Procedure provides for such hearings by order of the court or on request of the litigants, but as this case was based on a publicly available poem, Amnesty International believes that the decision was flawed and politically motivated.

Al-'Ajami's lawyer's objections were rejected. In private audience after the court session, the presiding judge assured the defence lawyer that the next court session would be open. This did not happen.

In July 2012 the court appointed another lawyer in place of the lawyer al-'Ajami had chosen to represent him. The replacement told the court that he was unwilling to represent the accused and that the lawyer whom the court replaced "was his rightful lawyer". At the 10 October 2012 session, the presiding judge confirmed the exclusion of the chosen lawyer.

In October, the government prevented al-'Ajami from attending his own trial during the last trial hearing, and he was not told on which day the court would deliver the verdict.

On the day of the verdict, in November 2012, the prison authorities did not bring al-'Ajami to court. Nevertheless, the judge announced to the court that the accused was present when sentenced to life imprisonment. In February 2013, an appeal court reduced the sentence to 15 years imprisonment.

On account of the lack of separation of investigative and adjudicative powers, the secrecy imposed upon the court proceedings and the imposition of ineffectual legal representation, Amnesty International concludes that al-'Ajami's trial was flagrantly unfair.

The organization considers Mohammad al-'Ajami to be a prisoner of conscience who has been tried and imprisoned solely because of his peaceful exercise of the right to freedom of expression. Amnesty International calls for his immediate and unconditional release.

As noted above, in the case of Ronaldo Lopez Ulep, the government did not refute Amnesty International's information that during his interrogation he was tortured and forced to sign a document in Arabic – which he could not read – that the government used in court as a 'confession'. The court did not to investigate Lopez Ulep's claim that he was tortured. The court sentenced Lopez Ulep to life imprisonment.

During an appeal court hearing in May 2014, the court failed to provide Lopez Ulep with any translation of proceedings. The appeal court ruling is scheduled for 31 May 2015.

Amnesty International urges the authorities to ensure that Lopez Ulep's allegations of torture are independently and impartially investigated. The authorities must either release him or re-try him in proceedings that fully conform to international fair trial standards and exclude from proceedings statements extracted through torture and other ill-treatment.

Amnesty International urges the government to:

- Act on:
- recommendations and its commitments arising from the 2014 Universal Periodic Review examination of Qatar (UPR);
- the concluding observations by the Committee on the Elimination of Discrimination against Women following consideration of Qatar's 2014 periodic report;, and
- the concluding observations by the Committee against Torture following consideration of Qatar's 2013 periodic report.
- Ratify the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, further to recommendations accepted by Qatar during the UPR;
- Release all prisoners of conscience;
- Conduct independent and impartial enquiries into allegations of torture, such as in the case of Ronaldo Lopez Ulep, and bring to justice in a fair trial anyone suspected of having committed torture; and

Review the basis for prosecution in cases reliant on evidence obtained from torture.

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Please recycle

United Arab Emirates (UAE): Address concerns of the UN Special Rapporteur on the independence of judges and lawyers

At its 29th session, the UN Human Rights Council (HRC) will consider the report of the Special Rapporteur on the independence of judges and lawyers Gabriela Knaul on her visit to the United Arab Emirates (UAE) from 28 January to 5 February 2014.[1]

Amnesty International welcomed the Special Rapporteur's preliminary findings when they were published on 5 February 2014 and commends her efforts in positively engaging the UAE authorities and civil society. This statement supplements those findings, while taking account of the response of the UAE government to the Special Rapporteur's draft report to the HRC, which had not been published at the time of writing.

In November 2012, the UAE was elected to serve a three-year term as a member of the HRC after the government pledged to introduce legal and other reforms to promote and protect human rights in accordance with international standards. Far from living up to these pledges, the UAE authorities embarked on a ruthless and unprecedented crackdown on freedom of expression and association. Today, scores of people have faced ill-treatment and tens languish in prison in prison following unfair trials, including prisoners of conscience.

Amnesty International notes the following concerns:

REPRISALS

The UAE authorities failed to respect the agreed terms of reference for the Special Rapporteur's visit, which included a guarantee that persons in contact with the Special Rapporteur in relation to her mandate would not suffer harassment or punishment or be subject to judicial proceedings for that contact. Twitter activist Osama al-Najjar, who met the Special Rapporteur during her visit, was arrested a month later and taken to a secret detention facility where he was tortured, denied access to a lawyer, and questioned about their meeting. In November 2014, he was convicted following an unfair trial before the State Security Chamber of the Federal Supreme Court (FSC), and sentenced to three years imprisonment and a fine. His charges included "contacting foreign organizations and presenting inaccurate information" about the detention and unfair mass trial of 94 activists in 2013, including his father.

VAGUE AND BROAD DEFINTION OF CRIMINAL OFFENCES

According to the response of the UAE government to the draft report of the Special Rapporteur, her report expresses concern at the vague and broad definition of criminal offences in the August 2014 Federal Law on Combating Terrorism Crimes, flouting the principle of legality, which imposes an obligation on states to define criminal offences precisely within the law.

Amnesty International shares this concern. Not only do some provisions in UAE laws severely restrict rights, they also equip the authorities with powers to criminalize freedom of expression and association and to restrict the effective enjoyment of these rights, especially by those expressing critical views about government practices.

Article 14 of the Federal Law on Combating Terrorism Crimes punishes with death or life imprisonment "*whoever commits an action or inaction intended... [to prevent] one of the State's institutions or the public authorities from practicing their activities, or prejudicing the national unity or the social security.*"

Article 15 imposes "temporary imprisonment" *on "whoever declares, by any means of communication, his opposition to the State, or to the ruling system therein or his non-allegiance to its leadership.*"

[1] A/HRC/29/26/Add.2

Article 180 of the Penal Code can criminalize peaceful criticism of the government or activities by associations, organizations, or groups that are remotely political. This provision was used to prosecute the 94 activists in the 2013 mass trial.

These and many other similarly vague provisions in UAE law may be used to sentence human rights defenders or peaceful critics of the government to lengthy prison terms or even death.

ENFORCED DISAPPEARANCE, TORTURE AND OTHER ILL-TREATMENT

The Special Rapporteur noted in her preliminary observations that in state security cases, individuals are often kept incommunicado for weeks or months in secret detention facilities. She received evidence that in many of these cases, detainees are tortured or ill-treated or both.

Amnesty International has also received testimonies and documented dozens of cases where the country's state security apparatus has subjected UAE nationals, including human rights activists, lawyers, and academics, as well as foreign nationals, to enforced disappearance and torture and other ill-treatment. The security authorities deny such detainees in their custody any access to the outside world. They have been allowed to continue these practices with impunity. These practices flout requirements of international law, as well as some safeguards in UAE law.

Defendants have described a range of methods of torture they have faced in secret detention including sleep deprivation, being hung upside down and being forced to sit in an electric chair. There are also many other methods.

The Special Rapporteur recommended that the authorities establish an independent committee of experts to investigate all claims of torture and other ill-treatment. Amnesty International fully concurs with this recommendation.

The government continues to deny the prevalence of torture and other ill-treatment. It has not implemented the Special Rapporteur's recommendation.

DUE PROCESS AND UNFAIR TRIAL

Amnesty International shares these concerns expressed by the Special Rapporteur that the authorities who arrest people on alleged state security crimes almost systematically violate due process and international fair trial guarantees. She noted serious procedural violations from the moment of arrest, usually carried out without a warrant, until the end of trial

The organization has reported on many cases where the government has imprisoned activists, critics of the government, and others charged with state security offences, following unfair trials before the State Security Chamber of the FSC. Defendants in these cases are generally arrested without judicial warrants; accorded limited or no access to lawyers throughout their pre-trial detention and sometimes even at trial. Some, when brought to trial, have told the court they were forced under torture to sign statements they were not permitted to read. These were then presented to the court as their "confessions." The State Security Chamber of the FSC has admitted these "confessions" as evidence of defendants' guilt, despite defendants' complaints and has failed to investigate allegations that they were extracted under torture.

The State Security Chamber of the FSC is a court of first instance, yet its judgements cannot be appealed. Article 230 of the Criminal Procedure Law provides a right of appeal only for judgements rendered by ordinary criminal courts of first degree, not the State Security Chamber of the FSC. Article 101 of the Constitution and Article 67 of the Law Concerning the Federal Supreme Court declare that its judgements are final.

The Special Rapporteur urged the government to revise all legislation to ensure the right of appeal in cases currently heard in the first instance before this court. In its response to the Special Rapporteur's draft report, the government said it is considering amending its laws to allow for rulings of the State Security Chamber to be challenged.

Amnesty International reminds the UAE government of similar commitments it has previously made and urges it to implement this recommendation.

RECOMMENDATIONS

Amnesty International urges the UAE authorities to address the concerns of the Special Rapporteur and to implement the following recommendations from the organization, as well as those outlined in her report:

- Immediately and unconditionally release all prisoners of conscience, those imprisoned solely for the peaceful exercise of their rights to freedom of expression, association or assembly or other legitimate exercise of their human rights;
- Ensure a narrow and clear definition of internationally recognizable offences; in particular amend the overly broad provisions in all legislation that criminalizes the peaceful exercise of freedom of expression, association or assembly;
- Prohibit secret detention and enforced disappearance; institute safeguards against torture and other ill-treatment, end the isolation in which these abuses occur, and establish institutional responsibility for the welfare of detainees and prisoners;
- Ensure in law and practice that no one is coerced through torture or ill-treatment into testifying against themselves or others, or to confess guilt and that no coerced "confessions" are accepted as evidence in court, except against a person accused of torture or other ill-treatment as evidence that the "confession" or other statement was made;
- Establish an independent committee of experts to investigate claims of torture and other ill-treatment of persons in detention. Where sufficient admissible evidence is found, those suspected of such actions must be brought to justice in proceedings that adhere to international fair trial standards;
- Revise all relevant legislation to ensure the right of appeal, including in cases currently heard in the first instance by the State Security Chamber of the FSC;
- Ensure that human rights defenders are able to carry out their peaceful activities without fear of harassment and reprisals by the government; ensure that they are fully protected in accordance with the UN Declaration on Human Rights Defenders and that the principles contained in the Declaration are fully incorporated into national law; and
- Ratify the International Covenant on Civil and Political Rights and its Optional Protocols and the International Convention for the Protection of all Persons from Enforced Disappearance.